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JEANNE L. GUNO, CLERK

BY: C. Flick

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

V1300CR201080049

**STATE'S MOTION TO COMPEL
DISCLOSURE OF CIVIL LAWSUITS
FILED AGAINST DEFENDANT AND/OR
JAMES RAY INTERNATIONAL (JRI)
ARISING OUT OF SPIRITUAL
WARRIOR 2009**

(Expedited Ruling Requested)

Division PTB

Comes now the State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and hereby moves this Court for an order compelling the disclosure of all pleadings and all discovery, including requests for admissions (and Defendant's answers thereto), interrogatories (and Defendant's answers thereto) and depositions, for all lawsuits filed against Defendant, James Arthur Ray, and/or James Ray International arising out of Spiritual Warrior 2009. This motion is made pursuant to Rule 15.2(g), Ariz. R. Crim. P. This Motion is supported by the following Memorandum of Points and Authorities.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Relevant Facts:**

3 On March 9, 2011, the evening before the testimony of State's witness Dennis Mahravar,
4 Defendant notified the State of his intent to use a complaint filed by Mr. Mahravar against
5 Defendant in a civil lawsuit to impeach the testimony of the witness. After hearing oral argument
6 on the issue, this Court found there was not a discovery violation by Defendant because the
7 defense did not intend to seek to admit the complaint. During the cross examination of Mr.
8 Mahravar, Defendant did not make reference to the complaint.

9
10 On March 22, 2011, during Defendant's cross examination of the State's witness Laurie
11 Gennari, Defendant used a Complaint for Damages filed in a civil lawsuit against James Ray
12 International and Defendant by Ms. Gennari's lawyer. The complaint had been filed in the
13 Superior Court in San Diego County, California on or after September 20, 2010. Defendant
14 never disclosed either the complaint or his intent to use it during trial to the State. Until
15 Defendant's use of the complaint, the State was unaware of the fact that Ms. Gennari had filed a
16 lawsuit.

17
18 Following oral argument on the issue, the Court again found no discovery violation on
19 the part of Defendant and allowed Defendant to continue to use the complaint during his cross-
20 examination of Ms. Gennari. On redirect, over repeated objections by Defendant, the State
21 further questioned the witness concerning the lawsuit. Prior to the conclusion of the testimony,
22 the complaint was admitted by stipulation of the parties.

23
24 **Legal Argument:**

25 **I. Rule 15.2(g) gives a trial court authority to order a defendant to disclose material**
26 **or information the state needs, but is unable to obtain with undue hardship.**

1 Rule 15.2(g) of the Arizona Rules of Criminal Procedure provides that the trial court
2 may order a defendant to disclose to the State material or information the State needs when the
3 State is not able to obtain the substantial equivalent by other means without undue hardship. It
4 is now clear that Defendant intends to introduce evidence of the civil lawsuits filed against
5 Defendant arising from Spiritual Warrior 2009. Yesterday, this Court found that this evidence
6 constituted statements of the witness and was admissible during trial.
7

8 Information relating to the lawsuits is not within the State's control and the State is
9 unable to obtain the information without undue hardship. Only the Defendant knows how many
10 lawsuits have been filed against him as a result of the events at Spiritual Warrior 2009.
11 Moreover, only the Defendant knows who has filed lawsuits against him. It is the Defendant
12 who initially sought to use this information and continues to use it. Defendant clearly has within
13 his possession and control the information sought by the State.
14

15 **II. Defendant's Fifth Amendment protection against compelled self-incrimination is**
16 **not violated by the production of the pleadings and discovery in the civil cases arising**
from Spiritual Warrior 2009.

17 Defendant's Fifth Amendment protection against compelled self-incrimination is not
18 violated by the production of the documents filed in the civil lawsuits. In *State v. Tudgay*, 128
19 Ariz. 1, 623 P.2d 360 (1981), the defendant alleged the trial court erred in permitting the
20 introduction into evidence of defendant's statements made at an earlier civil disposition. The
21 civil case had been filed by the surviving spouse of the victim in the defendant's criminal
22 manslaughter case. At the time of the criminal trial, the civil case was settled and dismissed and
23 the deposition was never filed in the civil matter. *Id.* at 3, 623 P.2d at 362.
24

25 On review the Arizona Supreme Court rejected the defendant's claim that his statements
26 were involuntarily compelled and noted the following:

1 Appellant was under oath and sworn to give the truthful testimony regarding the
2 traffic accident. Generally, the defendant in a civil proceeding has waived his
3 privilege against self-incrimination by making a deposition containing
4 incriminating matters, and it is ordinarily immaterial whether he appeared
5 voluntarily or under compulsion of an order from the court or subpoena or by
6 notice from the adverse party. Annot., 72 A.L.R.2d 830 at 837 (1960) (self-
incrimination waiver civil cases). Appellant's appearance at the deposition
pursuant to the adverse party's notice does not amount to coercion or duress.
Therefore, we find no error in the trial court's admission at the criminal trial of
appellant's statements made in the earlier civil deposition.

7 *Id.* at 5, 623 at 364.

8 The *Tudgay* Court also rejected the defendant's assertion that the deposition testimony
9 was admitted without proper foundation. Specifically, the Court found the statements were not
10 hearsay, but admissions by a party-opponent properly introduced at trial by the State against the
11 defendant. *Id.* at 5. Accordingly, the Court found the admission of the civil deposition in the
12 criminal trial of the defendant was not error. *Id.*

13
14 The production of the information relating to the lawsuit does not require Defendant to
15 admit to anything. *Contrast State ex rel. Hyder v. Superior Court*, 625 128 Ariz. 253, 257, 625
16 P.2d 316, 320 (1981) (holding that a subpoena directing a defendant to produce "[a]ny and all
17 personal letters written by [the defendant]," would require the defendant to admit he was the
18 author of the letters and violate his privilege against self-incrimination.) There is nothing in the
19 act of production of the pleadings and the discovery in the civil matters arising from Spiritual
20 Warrior 2009 that would violate his Fifth Amendment privilege.

21
22 **Conclusion:**

23 Defendant has now made known his intent to use the civil complaints filed by the State's
24 witnesses for impeachment of those witnesses during trial. This Court has found the complaints
25 constitute statements of the witnesses and ruled that their use is permissible without advance
26

1 notice to the State. The civil cases arising out of Spiritual Warrior are relevant and material, but
2 the State has no way of obtaining the requested documents without undue hardship. In contrast,
3 the Defendant, as a named party to the civil cases, has full access to the materials.

4 The State respectfully requests this Court order Defendant to disclose all pleadings and
5 discovery, including requests for admissions (and Defendant's answers thereto), interrogatories
6 (and Defendant's answers thereto) and depositions, for all lawsuits filed against Defendant,
7 James Arthur Ray, and/or James Ray International arising out of Spiritual Warrior 2009. Due to
8 the fact that Defendant has possession of these materials and is currently using them in an on-
9 going trial, the State requests an expedited ruling and disclosure deadline. A proposed form of
10 Order is attached.
11

12 RESPECTFULLY submitted this 24th day of March, 2011.
13

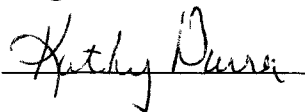
14
15 By  for
16 SHEILA SULLIVAN POLK
17 YAVAPAI COUNTY ATTORNEY

18 **COPIES** of the foregoing emailed this
19 24th day of March, 2011:

20 Hon. Warren Darrow
21 Dtroxell@courts.az.gov

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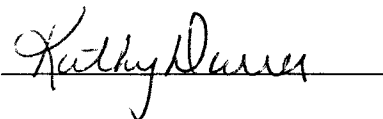
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COPIES of the foregoing delivered this
24th day of March, 2011, to

Thomas Kelly
Via courthouse mailbox

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8 **IN THE SUPERIOR COURT**

9 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

10 STATE OF ARIZONA,

V1300CR201080049

11 Plaintiff,

ORDER

12 vs.

13 JAMES ARTHUR RAY,

14 Defendant.

15 Pursuant to the State's Motion to Compel Disclosure of Civil Lawsuits Filed Against
16 Defendant and/or James Ray International (JRI), and good cause appearing,

17 IT IS THEREFORE ORDERED that Defendant shall disclose to the State all pleadings
18 and all discovery, including requests for admissions (and Defendant's answers thereto),
19 interrogatories (and Defendant's answers thereto), and depositions, for all lawsuits filed against
20 Defendant, James Arthur Ray, and/or James Ray International (JRI) arising out of Spiritual
21 Warrior 2009. Disclosure shall be made no later than five days from the date of this Order.

22 SIGNED this ____ day of March, 2011.

23
24
25 _____
26 Warren R. Darrow
Judge of the Superior Court